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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

NORTHERN DYNASTY MINERALS LTD., *et al.*,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Defendants.

Case No. 3:24-cv-00059-SLG

JOINT MOTION TO STAY EPA ADMINISTRATIVE RECORD BRIEFING

Plaintiffs and Defendants (the “Parties”) jointly move to stay potential administrative record briefing regarding EPA’s administrative record to allow the Parties more time to discuss potential record supplementation in this case and to coordinate briefing of potential motions to supplement EPA’s administrative record with the two related cases that also challenge the January 2023 Final Determination of the U.S. Environmental Protection Agency Pursuant to Section 404(c) of the Clean Water Act [for the] Pebble Deposit Area, Southwest Alaska (“Final Determination”).¹ The Parties propose to file a status report with the Court regarding potential motions to supplement EPA’s administrative record on December 13, 2024. In support of this joint motion, the Parties state further as follows.

1. On March 15, 2024, Plaintiffs filed their Complaint in this case, challenging EPA’s Final Determination. ECF 1. EPA filed its Answer to the Complaint on May 20, 2024. ECF 43.

2. On August 2, 2024, EPA filed a certified index to its administrative record with the Court and served copies of the record on Plaintiffs and the Court. ECF 87. EPA’s administrative record contains approximately 40,000 documents, comprising approximately 500,000 pages. ECF 87-2.

3. On August 16, 2024, Plaintiffs filed their First Amended and Supplemented Complaint for Declaratory and Injunctive Relief (“Amended Complaint”), which includes a challenge to an April 2024 Record of Decision by the United States Army Corps of

¹ The two related cases are *State of Alaska v. United States Environmental Protection Agency*, Case No. 3:24-cv-00084-SLG, and *Iliamna Natives Ltd., et al. v. Environmental Protection Agency, et al.*, Case No. 3:24-cv-00132-SLG. Motions to stay briefing regarding potential supplementation of EPA’s record also are expected to be filed in those cases.

Engineers (“Corps”). ECF 91.² Defendants filed their Answer to the Amended Complaint on September 27, 2024. ECF 109.

4. The Parties have been conferring in good faith to seek to resolve disputes related to potentially supplementing EPA’s administrative record in this case without engaging in contested motion practice. That process is ongoing and nearly complete. However, the parties require additional time to conclude the meet and confer process. Accordingly, Plaintiffs recently moved for an extension to November 8, 2024, to file a motion to supplement EPA’s administrative record, ECF 116, and this Court granted the motion. ECF 118.

5. This Court has stated that it intends to consolidate the three related matters that challenge the Final Determination. *See, e.g.*, ECF 111. While some of the parties to the related cases have expressed preferences or sought conditions in the event that the related cases are consolidated, none of the parties opposed consolidation. *See, e.g.*, ECF 117.

6. It would be beneficial to stay briefing of a potential motion to supplement EPA’s record in this case to allow the Parties more time to discuss potential supplementation and to seek to develop a coordinated schedule for potential motions to supplement that record (if any are required) in the three related cases. The Parties would benefit from the additional time to confer and may be able to narrow or eliminate the issues

² On October 18, 2024, Defendants filed a certified index of the Corps’ administrative record, ECF 112, and served that record on Plaintiffs. Under ECF 65 and Local Rule 16.3(b)(2), a motion to supplement the Corps’ administrative record is due on November 8, 2024. This motion does not address that deadline or briefing schedule. Instead, the Parties filed a separate motion that seeks a proposed schedule for briefing a motion to supplement the Corps’ record. ECF 119.

presented to this Court in this matter. In addition, EPA expects to require time to confer with the plaintiffs in the related cases regarding potential supplementation, and it likely would be more efficient for the Parties and the Court to address a motion to supplement EPA's administrative record in this matter under the same schedule as any such motions in the related cases.

7. Intervenor-Defendants have represented to undersigned counsel for Defendants that Intervenor-Defendants do not oppose the relief sought in this motion.

8. Accordingly, there is good cause to stay administrative record briefing in this case. If this joint motion is granted, the Parties would file a status report with the Court regarding potential briefing of a motion to supplement EPA's administrative record on December 13, 2024.

9. A proposed order granting this joint motion is being filed herewith.

Respectfully submitted on November 6, 2024,
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